

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY WWC)	ORDER GRANTING MOTION
LICENSE, LLC D/B/A CELLULARONE FOR)	TO EXPAND PROCEDURAL
DESIGNATION AS AN ELIGIBLE)	SCHEDULE; ORDER
TELECOMMUNICATIONS CARRIER IN OTHER)	GRANTING IN PART AND
RURAL AREAS)	DENYING IN PART MOTION
)	TO COMPEL DISCOVERY;
)	ORDER GRANTING MOTION
)	TO WITHDRAW
)	TC03-191

On November 5, 2003, the Public Utilities Commission (Commission) received a filing by WWC Holding Co., Inc. d/b/a CellularOne (WWC) petitioning for approval of it as an eligible telecommunications carrier (ETC) in the study areas of the following rural telephone companies: Golden West Telecommunications Cooperative, Inc., James Valley Cooperative Telephone Company, Splitrock Properties, Inc., Venture Communications Cooperative f/k/a Sully Buttes Telephone Cooperative, Inc., Tri-County Telcom, Inc., Vivian Telephone Company, West River Telecommunications Cooperative (Mobridge) - SD, and West River Telecommunications Cooperative - SD.

On November 6, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of November 21, 2003, to interested individuals and entities. On November 21, 2003, Petitions to Intervene were filed by James Valley Cooperative Telephone Company, South Dakota Telecommunications Association, Alliance Communications Cooperative, Inc., Splitrock Properties, Inc., West River Telecommunications Cooperative, Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company, Venture Communications Cooperative, and Tri-County Telcom, Inc. WWC objected to the intervention of South Dakota Telecommunications Association. At its regularly scheduled meeting of December 2, 2003, the Commission granted the above Petitions to Intervene. On January 2, 2004, WWC filed a Motion to Amend Petition to substitute as petitioner WWC License, LLC as the correct party. At its regularly scheduled meeting of January 20, 2004, the Commission granted the Motion to Amend Petition.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81; ARSD 20:10:32:42 through 20:10:32:46, inclusive; and 47 U.S.C. § 214(e)(1) through (5). By order dated February 13, 2004, the Commission set the following procedural schedule regarding the filing of testimony:

December 30, 2003 - WWC filed its direct testimony;

March 15, 2004 - Intervenors shall file reply testimony;

March 29, 2004 - WWC may file rebuttal testimony;

April 8, 2004 - Intervenors may file surrebuttal testimony.

The hearing was scheduled for May 4 through May 6, 2004. The issue at the hearing is whether WWC should be granted designation as an eligible telecommunications carrier in the study areas of the above listed rural telephone companies.

On March 5, 2004, the Commission received from the Intervenors a Motion to Compel Discovery and a Motion to Expand Procedural Schedule. On March 12, 2004, WWC filed its Opposition to Intervenors' Motion to Expand Procedural Schedule, its Opposition to Intervenors' Motion

to Compel Discovery, and an affidavit of Gene DeJordy. Included in this filing was additional responses to discovery that was the subject of the Motion to Compel Discovery.

On March 15, 2004, the Commission considered the motions filed by the Intervenor. The Intervenor proposed the following changes to the procedural schedule: Intervenor file reply testimony by March 16, 2004; Intervenor serve additional discovery; WWC files responses to discovery by March 31, 2004; WWC files rebuttal testimony by April 5, 2004; and Intervenor file surrebuttal (which may also address supplemental discovery and the discovery responses filed by WWC on March 12, 2004) by April 16, 2004.

The Intervenor also requested the opportunity to serve additional discovery requests upon WWC. The Intervenor requested the opportunity to serve additional discovery requests due to a recent decision issued by the Federal Communications Commission (FCC)¹ and a recent decision issued by the Federal-State Joint Board on Universal Service.² After listening to the arguments of the parties, the Commission voted to grant the Intervenor's Motion to Expand Procedural Schedule. The Commission accepted the proposed revised procedural schedule as proposed by the Intervenor with the addition of April 23, 2004, as the date WWC may file surrebuttal. Thus, the Commission adopts the following revised procedural schedule:

March 16, 2004 - Intervenor shall file reply testimony;

March 17, 2004 - Intervenor shall serve additional discovery;

March 31, 2004 - WWC files responses to discovery;

April 5, 2004 - WWC may rebuttal testimony;

April 16, 2004 - Intervenor may file surrebuttal testimony which may also address WWC's responses to the supplemental discovery and the additional discovery responses filed by WWC on March 12, 2004;

April 23, 2004 - WWC may file surrebuttal testimony.

The Commission also found good cause existed to grant the Intervenor's request to serve additional discovery requests upon WWC. After listening to the arguments of the parties regarding the Motion to Compel Discovery, the Commission decided to take that matter under advisement.

At its March 23, 2004, meeting, the Commission considered the Intervenor's Motion to Compel Discovery.³ The Motion to Compel Discovery concerned interrogatories 1c, 1d, 2, 4, 5, 6b, 6c, 6d, 6g, 7, 9, 10, and 11. With respect to interrogatories 1c and 1d, the Commission found that, based on WWC's statements, WWC does not have the additional information as requested by the Intervenor, and denied the motion. With respect to interrogatory 2, the Commission noted that WWC had provided that information so the issue was moot. With respect to interrogatory 4, the Commission found that, based on WWC's statements, WWC does not have the additional information as requested by the Intervenor, and denied the motion. With respect to interrogatory 5, the Commission found that the number and location of WWC's towers on January 1, 1999, is not relevant nor is it reasonably

¹ Memorandum Opinion and Order, *In the Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-388, released January 22, 2004.

² Recommended Decision, *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04J-1, Released February 27, 2004.

³ Commissioner Burg was not present and did not vote on the issues presented at this meeting.

calculated to lead to the discovery of admissible evidence and denied the motion. With respect to interrogatories 6b, 6c, 6d, and 6g, the Commission found that the information requested was relevant with respect to the study areas that WWC is requesting to be designated as an ETC in, and ordered that WWC provide the information as requested by the Intervenor regarding towers and auxiliary and back up power that serve the applicable study areas. With respect to interrogatory 7, the Commission found that WWC shall provide the information requested regarding the list of towers WWC plans to construct in the future with respect to serving the areas that WWC has requested ETC designation for. With respect to interrogatory 9, the Commission noted that WWC has stated it will provide this information but has not yet provided it and the Commission granted the motion to compel. With respect to interrogatory 10, the Commission found that the request for additional years of information is not relevant or likely to lead to admissible evidence and denied the motion. With respect to interrogatory 11, the Commission found that, based on WWC's statements, WWC does not have the information necessary to break out the history of costs attributable to the service areas, and the Commission denied the motion.

On March 11, 2004, the Commission received a Motion to Withdraw Petition to Intervene of Alliance and Splitrock. At its March 23, 2004, meeting, the Commission also considered this motion. No party objected to granting the Motion to Withdraw Petition to Intervene of Alliance and Splitrock. The Commission voted to grant the motion.

It is therefore

ORDERED, that the procedural schedule is revised as set forth above; and it is

FURTHER ORDERED, that the Intervenor's request to serve additional discovery is granted; and it is

FURTHER ORDERED, that the motion to compel discovery is granted in part and denied in part as set forth above; and it is

FURTHER ORDERED, that the Motion to Withdraw Petition to Intervene of Alliance and Splitrock is granted.

Dated at Pierre, South Dakota, this 25th day of March, 2004.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: _____

Date: _____

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

ROBERT K. SAHR, Chairman

GARY HANSON, Commissioner

JAMES A. BURG, Commissioner (voted on
issues presented at March 15, 2004
meeting)